

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

HCR, INC., an Oklahoma)	
corporation,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-10-323-KEW
)	
KATHLEEN SEBELIUS, Secretary)	
of United States Department)	
of Health and Human Services,)	
)	
Defendant.)	

OPINION AND ORDER

This matter comes before this Court on Defendant's Motion to Alter or Amend the Judgment (Docket Entry #26). On September 29, 2011, this Court granted Plaintiff's Motion for Summary Judgment, finding 1) the regulation found at 42 C.F.R. § 418.309(b) to be invalid on its face and of no effect; 2) Defendant's calculation of HCR's cap and reimbursement liability made for the fiscal year ending October 31, 2008 should be vacated;

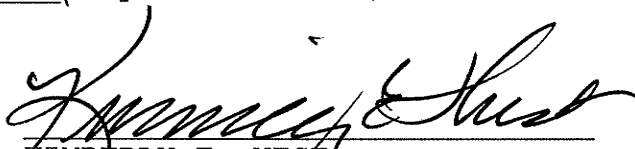
3) the case should be remanded to Defendant and CMS for the purpose of recalculating the reimbursement amount and issuing a new Demand for Reimbursement to HCR in accordance with the statute's proportional calculation. This Court limited the maximum assessment by Defendant against HCR to \$416,636.37 plus interest since Defendant did not object to that amount in the summary judgment process; 4) permanently enjoining Defendant from enforcing the application of 42 C.F.R. § 418.309(b) against HCR, Inc. at any time in the future; 5) enjoining Defendant from

charging interest on the reimbursement amount until such time as Defendant issued a new Demand for Reimbursement; 6) all payments made by HCR under the invalid calculation should be applied to the new calculation; and 7) allowing HCR to seek attorney's fees and costs by separate motion.

Defendant contends it was improper for this Court to limit the assessment on remand. A review of the docket reveals Plaintiff has not responded to the Motion within the time allowed by this Court's local rules. EDOK LCvR 7.1(f). As a result, the Motion is deemed confessed, entitling Defendant to the relief requested.

IT IS THEREFORE ORDERED that Defendant's Motion to Alter or Amend the Judgment (Docket Entry #26) is hereby **GRANTED**. As a result, the Opinion and Order and resulting Judgment entered September 29, 2011 is hereby **ALTERED** to vacate that portion which restricts Defendant's assessment on remand to no more than \$416,636.37. In all other respects, the findings and rulings of the Court remain in full force and effect.

IT IS SO ORDERED this 22nd day of November, 2011.


KIMBERLY E. WEST
UNITED STATES MAGISTRATE JUDGE